

Pending the discussion on the above amendment, on motion of Senator Bradshaw, the Senate adjourned until Wednesday morning—to-morrow, the twenty-first of April, being a legal holiday.

EIGHTY-SECOND DAY.

SENATE CHAMBER, }
Austin, April 22, 1874. }

Senate met pursuant to adjournment. Roll called; quorum present.

Prayer by the chaplain.

Journal of Monday read and adopted.

On motion of Senator Wood, the Secretary was excused for the day, on account of sickness.

Senator Trolinger, for Committee on Engrossed Bills, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Engrossed Bills, beg leave to report that they have carefully examined and compared Senate Joint Resolution No. 391, "Joint Resolution to annex the parishes of Caddo and De Soto, State of Louisiana, to the State of Texas," and find the same correctly engrossed.

W. H. TROLINGER, for Committee.

Senator Baker, Chairman Finance Committee, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Finance, to whom was referred Senate bill No. 413, "An Act to make an appropriation to pay the interest on the bonded indebtedness of the State, and the interest on State Treasury Warrants," beg leave to report the same back, with the recommendation that it be passed.

Senator Bradshaw introduced a bill entitled "An Act for the relief of Taylor Barnes, assignee of Alexander Parks." Read first time and ordered to lie on the table.

Senator Wood, for Committee on Internal Improvements, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

SIR—Your Committee on Internal Improvements, to whom was referred Senate bill No. 412, "An Act to incorporate

the Caddo, Paris and Jefferson branch of the M., K. and T. Railway, have carefully considered same and instruct me to report same back, with following amendments, and recommend its passage as amended, viz: Amend section three by adding after the word "provided," "that in all cases where the located line of said road shall pass within four miles of any county seat, said company shall build to such town, and maintain and operate a freight and passenger depot within one-half mile of the public square of such town," and strike out all of said section after the word "provided" down to the word "they," and add to section three the following: "*Provided, further,* said company shall not consolidate with any other road in the State, except by and with the consent of the Legislature," and add to section seven the words "Four feet eight and one-half inches." W. D. Wood, for Committee.

Amendments adopted.

Senator Russell introduced a bill entitled "An Act to legalize the marriage of Julius Henry and Bertha Nathan." Read first time.

On motion of Senator Ireland, the rules were suspended and bill read second time.

On motion of Senator Friend, the bill was referred to Judiciary Committee.

The unfinished business being the consideration of Senate bill No. 251, entitled "An Act to amend 'An act to regulate assessment and collection of taxes,' approved May 31, 1873, and to provide penalties for the enforcement of the same," pending the amendment offered by Senator Culberson, it was taken up.

Senator Wood offered the following as a substitute for the amendment offered by Senator Culberson: Amend section twenty-one, clause first of said section to read as follows: "Clause 1. The property of all railroad and telegraph companies situated in this State shall be rendered for the purposes of taxation to the justices of the peace of the precinct where the domiciled principal office or place of business of such company may be situated. The list returned by railroad and telegraph companies shall show, as provided in this act, for the property situated in each particular county; the property situated within the limits of any incorporated town or city in this State. The mayor or other executive officer of such incorporated town or city, shall certify as required of the presiding justice of

each county, in clause 18, of this section, the general and special taxes assessed by such corporation on such property, each year, and the Comptroller shall cause said taxes due such city or town to be assessed and collected on such property for the use and benefit of said town or city, as is directed in this act, for special and general taxes on the property of railroads and telegraphs for the several counties; and the value on which said town and city taxes are to be assessed and collected by the Comptroller, shall be ascertained in the same way he ascertains the value on which the taxes are to be assessed in favor of the several counties under this act. It is further declared that the uncompleted road bed of any railroad company, in this State, on which the iron is not laid, shall not be taxable under this act. The lists required by the sheriffs to be made by this act, of the property of railroad and telegraph companies, each year, in their respective counties, shall not be made except on the special order of the Comptroller. The taxes from railroad and telegraph companies shall be due and payable, when the other State and county taxes are due and payable by law. In proportioning the value of the rolling stock and movable equipments of a railroad, a part of which is without the State, a part of the value of the entire rolling stock and movable equipments of such road shall be taxable, as shall be proportionate to the number of miles of such road in this State, to the number of miles of said road out of the State.

The substitute was adopted.

The substitute was then adopted as an amendment.

Senator Wood then offered the following amendment :

Amend caption of bill, so as to read as follows : " An act amendatory of and supplemental to an act entitled ' an act to regulate the assessment and collection of taxes. ' "

Adopted.

Senator Wood offered the following amendment, as an additional section :

Section On or before the first day of May, in each year, the presiding justice of each and every county in this State, shall forward to each and every other presiding justice, of each and every other county in this State, the rate of the general *ad valorem* tax of his county for such year, and of all special county *ad valorem* taxes, upon real property, levied by such county for the year. Such statement shall be under the hand and seal of such justice, and

the county shall defray the expense. When, under this act, land is rendered by the tax-payer, situated out of the county of his residence, in making out the rates for such land situated out of the county, the general and special taxes as stated, and set forth in the certificate, provided in this section, by the county where such real property is situated, shall be levied and collected for the use and benefit of such county, and shall be paid into the State Treasury for the benefit, and to the credit of such county. In order to ascertain a fair and equitable value on property situated out of the county where it is rendered for taxation, the Comptroller shall on or before the first day of January, of each and every year, certify to the assessing officers of each and every county in this State, the average value of land in every county in this State. In valuing land situated out of the county where rendered, the assessor valuing the same, if the land is improved, shall value it at average value of land, as certified by the Comptroller, in the county where situated; if it is unimproved land, the assessing officer shall value same at twenty-five per cent. less than the original value of lands in the county where it is situated. Real estate situated in any city or town of over two thousand inhabitants, shall be rendered for taxation in the county where situated; and the Comptroller shall not consider the value of town or city lots in any county, in ascertaining the average value of the land in such county.

A message was received from the House, announcing the passage of the following bills:

Senate bill, No. 136, "An Act to extend the time for the construction of works for internal improvements," with amendments by the House.

Senate bill, No. 86, "An Act to incorporate the Southwestern and Rio Grande Railroad Company, and to aid in the construction of the same," with amendments by the House.

Senate bill, No. 240, "An Act to incorporate the Texas and Midland Railway, and to aid in the construction of the same," with amendments by the House.

Also, that the House had refused to concur in Senate amendments, to House bill, No. 41, "An Act to allow incorporated cities and towns to prevent erection of wooden buildings, in any part of said cities and towns."

Also, that the House had appointed Representatives Reeves, Simpson, Barziza, Harris and Cochran, as a Com-

mittee of Free Conference, on the part of the House, to act with the committee on the part of the Senate, on the disagreement between the two Houses, on House bill, No. 385, "An Act to limit the power of taxation in cities and towns."

Also, that the House had concurred in Senate amendments to the following House bills:

House bill, No. 331, "An Act to repeal Articles thirty and thirty-one of 'an act to organize the Courts of Justices of the Peace and County Courts, and to define their jurisdiction and duties,'" approved August 13, 1870.

House bill, No. 241, "An Act to provide for the amendment to town and city charters."

House bill, No. 174, "An Act to provide for the sale of the alternate sections of land, as surveyed by Railroad Companies, and set apart for the benefit of the common school fund."

House bill, No. 406, "An Act to add the county of Waller to the twenty-ninth judicial district, and prescribing the times of holding the district courts in said district."

Also, that the House has adopted the report of committee of free conference on Senate substitute for House bill, No. 6, "an act to ascertain the amount due teachers of public free schools; and to provide for the payment of the same."

Senator Joseph offered an amendment to the amendment, by striking out "twenty-five" before the words "per cent." and inserting the word "fifty." Adopted.

Senator Dillard moved a reconsideration of the vote, adopting the amendment to the amendment, offered by Senator Joseph. Carried.

Senator Dillard then moved to strike out both "twenty-five per cent." and "fifty per cent." Ruled out of order.

Senator Dillard moved a division of the question on the motion of Senator Joseph. Ruled out of order.

The question then recurring on the adoption of the amendment offered by Senator Joseph, it was adopted by the following vote:

YEAS--Senators Ball, Baker, Bradley, Burton, Culbertson, Dwyer, Erath, Friend, Joseph, Ledbetter, Moore, Russell, Shepard and Wood--14.

NAYS--Senators Allison, Camp, Davenport, Dillard, Ellis, Hobby, Harris, Parker, Stirman, Swift, Trolinger and Westfall--12.

Senator Hobby offered the following amendment :

Strike out in line forty-five, of section ..., all after the word "is" down to the word "situated" in same section. Adopted.

Senator Wood offered the following amendment, as an additional section :

Section ... That all laws and parts of laws in conflict with the provisions of this act, are hereby repealed. Adopted.

Senator Wood offered the following amendment :

Before the word "average," in twenty-first line of second page of section, insert the words "in sum not less than" in eleventh line from bottom, on second page, before the words "fifty per cent," insert the words "not greater than." Adopted.

Senator Hobby offered the following as an additional section :

Section ... That, in event of a failure of the assessor, to return a complete list of all those subject to an occupation tax, the collector shall, nevertheless, collect the occupation tax from those, whose occupation may not have been returned by the assessor; and if any person shall not have been regularly assessed, they may be assessed at any time, in the manner prescribed by law.

Adopted.

The question occurring on the engrossment of the bill, it was ordered engrossed, by the following vote :

YEAS—Senators Baker, Bradley, Burton, Camp, Culbertson, Dwyer, Friend, Joseph, Ledbetter, Morris, Moore, Russell, Shepard, Stirman and Wood—15.

NAYS—Senators Allison, Ball, Davenport, Dillard, Ellis, Erath, Hobby, Ireland, Parker, Stirman, Swift, Trolinger and Westall—13.

On motion of Senator Friend, the rules were suspended, to allow him to introduce the following resolution :

Resolved, That the Secretary of the Senate be required to have printed for distribution, one hundred copies of the "Act to encourage stock raising, and the protection of stock raisers," together with the supplemental act thereto, passed on the twentieth inst., by the Senate.

Senator Ellis moved to amend by striking out "three hundred," and inserting the words "one thousand." The amendment was adopted.

The resolution, as amended, was then adopted.

On motion of Senator Wood, the Senate reconsidered the vote, by which they passed to engrossment, Senate substitute for Senate bills, Nos. 251, 261, and 277, entitled "an act to regulate the assessment and collection of taxes, and to provide penalties for the enforcement of the same."

Senator Baker then offered the following amendment:

Amend by striking out all of section ..., after the words "to the credit of said county." Adopted.

The question then recurring on the engrossment of the bill, as amended, it was ordered engrossed.

On motion of Senator Wood, the rules were suspended, bill read third time, and passed by the following vote:

YEAS—Senators Baker, Bradley, Burton, Camp, Culberson, Davenport, Dwyer, Ellis, Friend, Hobby, Joseph, Ledbetter, Morris, Moore, Randle, Russell, Shepard, Swift, Trolinger, Westfall and Wood—21.

NAYS—Senators Allison, Ball, Dillard, Erath, Parker and Stirman—6.

On motion of Senator Erath, the rules were suspended, and House bill, No. 240, "an act to incorporate the Texas and Midland Railway, and to aid in the construction of the same, with amendments by the House, was taken up.

On motion of Senator Erath, the House amendments were concurred in.

On motion of Senator Wood, the rules were suspended, and House bill No. 463, "An Act authorizing the judge of the Twenty-eighth Judicial District to hold a special term of court in Brazos county, was taken up and read second time, and passed to third reading.

On motion of Senator Wood, the rules were further suspended, bill read third time and passed.

Senator Culberson, for Senate Joint Special Committee, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

The Joint Special Committee, to whom was referred the address for the removal of the Hon. J. P. Osterhout, Judge of the Thirty-fourth Judicial District, have considered the same, and I am instructed to report the address back to the Senate. The Committee believe that the charges set forth in said address, if sustained by proof, are sufficient to justify the removal of said officer, but in view of an early adjournment of the Legislature, and the want of time to properly investigate the charges, the Committee recom-

mend that no further action be taken on the same, at this session of the Legislature.

D. B. CULBERSON, Chairman.

G. B. ERATH,
A. J. BALL,
H. F. O'NEAL,
L. S. LAWHON,
H. MANNING,
D. U. BARZIZA,
W. B. SAYERS.

On motion of Senator Westfall, the report was adopted.

Senator Dillard introduced a bill, entitled "An Act to authorize the judge of the Twenty-fifth Judicial District, to hold a special term of court in El Paso county." Read first time.

On motion of Senator Dillard, the rules were suspended, and bill read second time.

On motion of Senator Russell, the rules were further suspended, bill read third time and passed.

Senator Dwyer, for Committee on Enrolled bills, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Enrolled Bills ask leave to report that they have carefully examined Senate bill No. 89, "An Act to incorporate the South-western Railroad Company, and to grant lands to aid in the construction of its road," and find the same correctly enrolled, and did on the twentieth day of April, 1874, at twelve o'clock M., present the same to the Governor for his approval.

Jos. E. DWYER, for Committee.

On motion of Senator Wood, the rules were suspended, and Senate bill No. 286, "An Act to incorporate the South-western and Rio Grande Railroad Company, and to aid in the construction of the same," together with House amendments thereto, was taken up.

On motion of Senator Swift, the House amendments were concurred in.

The hour for the consideration of the special order having arrived, to-wit: House bill No. 387, "An Act to provide for the sale of the land granted to the Deaf and Dumb, the Lunatic and Blind Asylums," it was taken up.

On motion of Senator Culberson, the bill was considered by sections.

Senator Joseph offered the following amendment :

“Add to section one, line two, the following words : ‘if satisfied of their qualifications.’ ” Adopted.

Senator Shepard offered the following amendment :

“In section five, line three, strike out the words ‘which shall be credited to him on the first payment, and deducted by the treasurer.’ ” Adopted.

Senator Shepard offered the following amendment :

“Amend section five, by striking out the word ‘but,’ in line five, and insert the word ‘and.’ ” Adopted.

Senator Ireland moved to strike out the word ‘himself,’ at end of section five. Adopted.

Senator Joseph offered the following amendment :

“Amend section six, line eight, by adding after the words ‘after settlement,’ the words ‘under the provisions of this act.’ ” Adopted.

Senator Trolinger offered the following amendment :

“Amend section six, line five, by striking out ‘six,’ and inserting ‘twelve.’ ” Lost.

Senator Joseph moved to amend the seventh section, line two, by inserting after the word ‘act,’ the word ‘who.’ ” Adopted.

Senator Friend offered the following amendment :

“Amend section seven, line eight, by striking out the words ‘when any such failure is made,’ and inserting in lieu thereof the words ‘three months after failure or refusal to make such payment.’ ” Lost.

Senator Friend offered the following amendment :

“Amend section seven, line three, by inserting between the words ‘refuse’ and the word ‘to’ the words ‘for three months.’ ” Adopted.

Senator Ellis offered the following amendment :

“Add to the end of section seven, the following words : ‘*provided*, that if any person shall have made five annual payments upon said tract of land, as required by this act, should he thereafter fail to make any of the remaining annual payments, the Commissioner of the General Land Office shall notify the sheriff of the county wherein said land is situate, of such failure ; and said sheriff shall immediately after such notification proceed to advertise, and sell said land as under execution, and shall pay into the State treasury the amount of the remaining annual installments, with interest thereon, according to their lien ; and the remainder of the proceeds of said sale, if any, shall be

paid to the original purchaser of said land, by said sheriff. The Commissioner of the General Land Office shall issue a patent to the purchaser of said land, at sheriff's sale, as soon as the terms of said sale is complied with.' " Lost.

Senator Morris offered the following amendment :

"Amend section eight, line four and seven, by striking out the word 'six,' and inserting 'twelve.'" Adopted.

Senator Ireland offered the following amendment :

"Amend section nine, tenth line, by striking out all after the word 'person.'" Adopted.

Senator Shepard offered the following amendment :

"Amend section ten, line four, by inserting after the word 'lands,' the words 'and for necessary fire wood.'" Adopted.

Senator Parker moved to strike out section ten. Lost.

Senator Allison moved the previous question. Previous question sustained.

The main question was then ordered, which was the passage of the bill to a third reading.

On motion of Senator Erath, the rules were suspended, bill read third time, and passed.

On motion of Senator Wood, the Senate adjourned.

AFTERNOON SESSION.

Senate met pursuant to adjournment. Roll called ; quorum present.

Senator Ireland offered the following resolution :

Resolved, That the resolution heretofore adopted by the Senate, providing for afternoon sessions, be and the same is hereby rescinded.

Read first time. On motion of Senator Ireland, the rules were suspended to consider said resolution.

The resolution was lost by the following vote :

YEAS—Senators Ball, Bradshaw, Bradley, Burton, Culberson, Ellis, Erath, Ireland, Ledbetter and Wood—10.

NAYS—Senators Baker, Camp, Dillard, Dwyer, Hobby, Moore, Parker, Russell, Shepard, Stirman, Swift, Trolinger and Westfall—13.

On motion of Senator Bradshaw, the rules were suspended to take up the bill introduced by him this morning entitled "An act for the relief of Taylor Barnes." The bill was taken up, and on motion of Senator Bradshaw, was referred to Committee on Private Land Claims.

A message was received from the Governor.

On motion of Senator Parker, the special order was suspended to take up Senate joint resolution "providing constitutional amendments."

Joint resolution taken up and read first time.

On motion of Senator Wood, the joint resolution was made special order for to-morrow at 9 A. M.

On motion of Senator Ireland, the rules were suspended and Senate bill, No. 136, taken up and made special order immediately after the one for 9 o'clock A. M. to-morrow.

Senator Culberson moved to adjourn. Lost.

By leave, Senator Shepard offered the following resolution:

Resolved, That the use of the Senate chamber, on the night of the 23d inst., be tendered to the Historical Association for the purpose of hearing an address by the Rev. H. S. Thrall. Adopted.

Senator Friend submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

The Committee on Engrossed Bills have compared and find correctly engrossed Senate bill No. 416, to authorize and require the Judge of the District Court of the Twenty-fifth Judicial District, to hold a special term of the District Court in and for El Paso county. W. R. FRIEND,

For Committee.

A message was received from the House announcing the passage of House bill No. 516, "An act to amend 'an act to establish a criminal court in and for the cities of Waco and Marlin, and defining the powers thereof,'" passed at the present session of the Legislature; also the passage of House bill No. 405, "An act to encourage irrigation in El Paso county, by granting land in aid thereof."

On motion of Senator Erath, the message from the Governor was taken up and read.

EXECUTIVE OFFICE,)
Austin, Texas, April 22, 1874.)

To the Honorable Senate and House of Representatives:

GENTLEMEN:--I respectfully call the attention of your honorable bodies to the accompanying communication from Hon. O. N. Hollingsworth, Superintendent of Public Instruction, and recommend that his suggestions of an amendment of the 32d section of the school law be

considered. That section of the school law authorizes the levy and collection, by the County Board of Directors, of an *ad valorem* tax upon all taxable property in the district to supply the deficiency of the school fund apportioned to the district. This section of the law, properly enforced, is absolutely necessary to our present free-school system; but as it stands, is inoperative, because no method or direction is prescribed for collection of the tax, and no proper officer is charged with the duty of collecting it. I recommend that this section be so amended as that this tax, when levied by the county boards of directors, shall be collected in the same manner as State and county taxes, and by the same officer.

QUARANTINE.

I transmit, herewith, to your honorable bodies, a communication from Dr. Peete, health officer at Galveston, making suggestions of amendments, which he believes desirable to our quarantine laws. I ask of your honorable bodies that consideration for this subject, which its importance to the public health, on one hand, and to commerce on the other, demands. I concur with Dr. Peete in opinion, on the points covered by his suggestions, save and except wherein he desires that the health officers, instead of the executive, shall have the power to designate the ports to be treated as infected ports. My objection to this is, that there being a health officer at each one of the towns and cities on the coast, under the amendment he suggests, each of these officers would determine this matter for himself, and possibly no two of them would arrive at the same conclusion, thus destroying the uniformity which would obtain in the quarantine under the present law. It can be readily seen that much confusion and detriment might ensue from this state of facts. By the regulations at one port a vessel might be detained, when at another a vessel from the same port would suffer no detention. A proper regard for sanitary measures might possibly, under such circumstances, be overshadowed in a competition of local commercial influences.

Restrictions, which the public health requires placed on commerce, it seems to me, should be uniform and general, giving no place an advantage over another on the coast, and this, I conceive, can only be accomplished by lodging

in one officer the discretion to control the whole matter by a general regulation to be enforced along the entire line of the coast.

I call the attention of your honorable bodies to another matter of importance in this connection, which has transpired or rather has become known in Texas, since the communication of Dr. Peete was received. I allude to the recent decision of the Supreme Court of the United States in the case of *Morgan v. Peete*, which went up from Texas. The meager synopsis of the opinion of the court in this case, which has reached us, indicates that section seven of the act authorizing quarantine on the coast of Texas, approved August 13th, 1870, has been decided unconstitutional, on the ground that it is an exercise by the State of the right to levy the duty of tonnage, and an interference with the supposed exclusive right of Congress to regulate commerce between the States. Not having the full text of the opinion, the extent and scope of it cannot be stated, but it is presumed, of course, that it does not question the right of the State to enact quarantine and health laws. This right has never been denied. As this seventh section of the quarantine act is an important part of the law, I recommend that it be superseded by a provision, which, while steering clear of constitutional objections, shall provide for enforcement of the act.

This, it is believed, can be done. I refer your honorable bodies to the case of the *City of New York v. Miln*, reported in 11th vol., *Peters' Reports*, p. 102, an examination of which will show how such an amendment may be constructed.

Very respectfully,

RICHARD COKE.

On motion of Senator Erath, that portion of the message relating to the communication of the Superintendent of Public Instruction, was referred to Committee on Education, and that portion relating to quarantine was referred to Committee on Judiciary.

Senator Russell introduced a joint resolution "granting leave of absence from the State to the Hon. E. Dougherty, Judge of the Fifteenth Judicial District." Read first time.

On motion of Senator Russell, the rules were suspended, joint resolution read second time, and ordered engrossed.

On motion of Senator Joseph, the rules were further suspended, resolution read third time and passed.

On motion of Senator Erath, the rules were suspended, and Senate bill No. 207, "An act to provide for disposing of certain lands belonging to Texas, known as the 'Indian Reservation,'" was taken up and made special order for Saturday next, at 3 o'clock P. M.

On motion of Senator Joseph, the Senate adjourned.

EIGHTY-THIRD DAY.

SENATE CHAMBER.)
Austin, April 23, 1874. }

Senate met pursuant to adjournment.

Roll called; quorum present.

Prayer by the chaplain.

The reading of the journal dispensed with.

(Senator Westfall in the chair.)

Senator Joseph presented certain accounts for papers. Referred to Committee on Claims and Accounts.

On motion of Senator Wood the Secretary was excused for the day.

Senator Ireland, Chairman of Judiciary Committee, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Judiciary, to whom was referred Senate bill No. 415, 'An act to legalize the marriage between Julius Henry and Bertha Nathan,' ask leave to return the same and recommend its passage.

IRELAND, Chairman.

The special order being the consideration of Senate Joint Resolution "proposing amendments to the Constitution of the State of Texas," it was taken up and read second time.

Senator Wood offered the following amendment as a substitute for section fourteen of article four:

Section 14. "There shall be established in each county of this State, a probate court, which shall be presided over by an officer styled a probate judge. Such officer shall be elected by the qualified voters of the county, and shall hold his office for four years and until his successor is elected and qualified, unless sooner removed by law. He shall be a qualified voter of the county and be learned in the law. The probate court shall have jurisdiction to take